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From: Graves, Brian
Sent: Tue 3/29/2016 9:12:58 PM
Subject: FW: GAO Finds EPA's SDWA Oversight Fails To Ensure Protection Of USDWs

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Sent: Tuesday, March 29, 2016 4:09 PM

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The Government Accountability Office (GAO) is faulting EPA's oversight of state and agency Safe Drinking Water Act (SDWA) permitting for some oil and gas activities by finding that EPA failed to collect adequate data to ensure the program protects underground sources of drinking water (USDW), and urging it to seek more information.

EPA in response to [GAO's findings](#) declines to adopt the call to gather additional data, saying that while it is working to expand its inventory of specific well data it does not think requiring states to submit that information now is necessary -- but GAO reiterates that such data is needed to better assess protection of USDWs.

GAO highlighted the data shortfall in a report requested by members of Congress and publicly released March 28. "EPA has not collected inspection and enforcement information, or consistently conducted specific oversight activities, to assess whether state and EPA-managed programs are protecting underground sources of drinking water," GAO says. "GAO recommends that, among other things, EPA require programs to report well-specific inspections data, clarify guidance on enforcement data reporting, and analyze the resources needed to oversee programs."

A summary of the report, which is dated February, says that the agency "generally agreed with GAO's findings, but does not plan to require well-specific data and analyze needed resources. GAO continues to believe that EPA should take both actions to better assess if programs protect underground sources of drinking water."

GAO in a prior [July 2014 report](#) found that EPA had not been adequately undertaking annual on-site SDWA compliance evaluations of state programs for "Class II" well permits that cover oil and gas activities, an issue that the agency said at the time it would evaluate to address some of the concerns.

Under the Class II rules of the federal underground injection control (UIC) program, EPA and states with delegated authority establish monitoring, mechanical integrity and other requirements for permitting of underground injection activities for oil and gas disposal wells, enhanced oil recovery wells and other operations related to oil and gas. The goal of the permitting process is to protect USDWs from adverse impacts from such activities.

GAO's new report could exacerbate concerns about oil and gas drilling's potential to impact USDWs, as it highlights a series of deficiencies in EPA's ability to ensure protection of the water supplies.

For example, GAO says that the agency does not collect specific inspection information but rather programmatic summaries. This does not allow the agency to assess whether states are meeting inspection goals and that enforcement data collected is often incomplete, the report says.

Additionally, GAO found that the agency has not consistently incorporated state UIC program requirements or revisions into federal regulations, nor has it maintained and final records of reviews of aquifer exemption approvals or conducted on-site annual site

evaluations to ensure protection of USDWs.

“EPA is also responsible for the final review, approval, and recordkeeping for all aquifer exemption applications, but the agency does not have the location or supporting documentation necessary to identify the size and location of all aquifers for which it has approved exemptions from protection under the act,” the report says.

California's Program

As a recent example, GAO cites a 2011 EPA audit and 2012 review of California's Class II program, which found numerous deficiencies, including that state officials may have allowed drillers to inject wastewater into "non-exempt aquifers," or USDWs, potentially posing a threat to valuable drinking water supplies.

“If EPA had maintained an updated database on aquifer exemptions, then EPA Region 9 may have had the information it needed to review injection well permits to determine whether injections were being made into exempted aquifers in California,” the report says, referencing the EPA region that oversees California and other Pacific Coast states.

On the aquifer exemptions, GAO recommends that the agency complete an aquifer exemption database and establish a way to update it.

In its Feb. 10 response to an earlier draft of the report, EPA said it will adopt the recommendation but objected to GAO's finding that EPA did not have adequate data to oversee aquifer exemptions.

“EPA said that our statement that the agency does not have sufficient information to oversee state and EPA-managed programs is incorrect because its regions have the most comprehensive and current data on aquifer exemptions as they conduct the final review of exemption requests and must approve all exemptions,” the report says.

SDWA generally prohibits waste disposal, mining, energy production or other activities which involve injection from occurring within USDWs, and requires permits for such underground injection activities to ensure USDWs are adequately protected to reduce risk to water supplies.

But EPA in a 1980 rulemaking established regulatory criteria for granting exemptions under SDWA for instances where an aquifer, which may otherwise be considered a USDW, does not currently serve as a source of drinking water and cannot do so in the future. EPA's regulations also require that the aquifer contain less than 10,000 milligrams per liter of total dissolved solids (TDS).

Wyoming Study

Environmentalists have long warned that oil and gas activities including hydraulic

fracturing have the potential to pollute USDWs, and have urged EPA to impose strict regulations on the sector.

EPA has done some research on the issue, including a December, 2011 draft report documenting its investigation of the alleged groundwater contamination near Pavillion, WY, which represented the agency's first public acknowledgment that reported pollution of an aquifer was "likely" due to fracking operations.

The agency in June 2014 announced it would drop its own study and instead support the state's efforts to conduct an investigation. Wyoming's Department of Environmental Quality (DEQ) in December [released its draft report](#), saying it is "unlikely" that the contamination is due to fracking wells.

EPA in [undated technical comments](#) to DEQ notes that the draft findings indicate that Wyoming classifies water suitable for domestic, irrigation, and livestock use as having less than 5,000 milligrams per liter of TDS, which the agency says it did not approve in the state's SDWA regulations evaluated in the early 1980s.

"EPA could not, through approval of a state's primacy program, change the regulatory definition of USDW," the comments say. The remarks potentially reflect another example where a state has possibly adopted their own less-protective definition of USDW without adequate agency oversight, which environmentalists say endangers groundwater.

USGS Analysis

Meanwhile, the U.S. Geological Survey on March 28 released an earthquake hazard study showing that "much more of the nation faces a significant chance of having damaging earthquakes over the next year, whether natural or human-induced" including those linked to Class II wastewater disposal wells.

In response to the report, the Sierra Club's Our Wild America Campaign Director Dan Chu said the study "once again highlights the dangers the fracking cycle poses to our communities.

"The world is already experiencing deadly storms, droughts, and erratic climate and weather extremes due to climate change, and the rapid increase in earthquakes caused by wastewater injections from the oil and gas industry only raises the threat to communities across the country." -- *Bridget DiCosmo* (bdicosmo@iwpnews.com)